

**STATE OF NORTH DAKOTA**  
**EDUCATION STANDARDS AND PRACTICES BOARD**

IN THE MATTER OF:	)	<b>RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER</b>
	)	
The Teaching License of Mark Carter	)	
	)	
Applicant.	)	

.....

On June 18, 2003, the Education Standards and Practices Board ("Board") requested the designation of an administrative law judge (ALJ) from the Office of Administrative Hearings ("OAH") to preside as hearing officer, to conduct a hearing and to issue recommended findings of fact and conclusions of law, as well as a recommended order, in regard to this matter. On June 20, 2003, the undersigned ALJ was designated.

This matter involves the January 20, 2003, application of Mark Carter ("Carter") for a renewal of his teaching license (SFN 9019 - the form terms the license a "North Dakota Educator's Professional License" - hereinafter "license").

On March 14, 2003, the Board acting through its attorney, Mr. Bill Peterson, assistant attorney general, issued to Carter a "Notice of Denial of Application Right to Request Hearing ("Notice of Denial"). On April 16, 2003, Carter requested that the Board "reconsider" or, in the alternative, he asked for an opportunity to "come in and explain myself" or for a hearing. The Board sent the matter to OAH.

On July 1, 2003, the Hearing Officer issued a Notice of Hearing. The notice scheduled a July 28, 2003, hearing. The hearing was held as scheduled. Carter appeared representing himself. Mr. Peterson represented the Board. Mr. Peterson called one witness, Ms. Janet Welk,

the Board's executive director. Mr. Peterson offered 10 exhibits (exhibits 1-10, yellow stickers), all of which were admitted. Carter testified in his own behalf and offered one exhibit (exhibit 11, blue sticker), which was admitted. The hearing officer took official notice of the pleadings that began this administrative process, the Board's Notice of Denial, etc., and Carter's letter request for a hearing.

At the close of the hearing, the ALJ heard oral argument from Carter and Mr. Peterson.

Based on the evidence presented at the hearing and the oral argument of the parties, the administrative law judge makes the following recommended findings of fact and conclusions of law.

### **FINDINGS OF FACT**

1. Carter is not currently licensed by the Board to teach in North Dakota. He applied for a renewal of his license ("Subsequent 5 Year License" - Application, exhibit 1) on January 20, 2003, received by the Board on January 23, 2003. His previous license expired January 20, 2003.

2. Carter taught in the Bismarck Public School System for 22 years, up until the beginning of the 2002-2003 school year. He resigned at the beginning of the school year just as classes were starting.

3. Carter gave his reasons for resigning as an accident he had just prior to the start of the school year, personal problems he had with a long-time live-in girlfriend who left him in August 2002, and the death of his father. Carter testified that his father passed away in October 2002.

4. Carter did not teach anywhere during the 2002-2003 school year.

5. Carter checked a box after the word "NO" in response to a question on his 2003 application form that asked "[h]ave you ever been convicted of a misdemeanor or felony other than minor traffic offenses? If **YES**, attach explanation and provide copies of court records." Exhibit 1.

6. In fact, the evidence shows Carter has several criminal convictions besides minor traffic offenses- an October 17, 2002, conviction for Driving Under the Influence in Bismarck Municipal Court; an October 31, 2002, conviction for operating a motor vehicle with no liability insurance policy in Bismarck Municipal Court; an October 31, 2002, conviction for Driving Under the Influence in Bismarck Municipal Court; an October 31, 2002, conviction for Duty Upon Striking Fixtures Upon a Highway in Bismarck Municipal Court; a February 20, 2003, conviction for Driving Under Suspension (while his driving privileges were suspended) in Bismarck Municipal Court; and a February 20, 2003, conviction for operating a motor vehicle with no liability insurance policy in Bismarck Municipal Court. Exhibits 5-10. *See* also exhibit 3, a Municipal Court Contact Card which also shows a conviction for Driving Under the Influence on January 24, 2003.

7. At the hearing, Carter admitted to the violations and to not indicating the violations on his application, saying that he forgot to include them. In response to the Board's Standard letter to applicants asking about criminal convictions and explanations, after the Board learned about Carter's criminal convictions from other sources, Carter sent the Board exhibit 3, upon which he wrote "[i]f started treatment - not working this year - Mark - any ques. ...[telephone number]" Carter sent no other documents and no further explanation.

8. Carter has been treated for alcohol addiction four times, at Heartview about five years ago; at the West Central Human Service Center about three years ago; at Trinity Addiction

Services in Minot about three years ago; and at Trinity Addiction Services in Minot in 2002. *See* exhibit 11, Report of Evaluation, Report of Addiction Treatment, and July 18, 2003, letter from a licensed addiction counselor at West Central Human Service Center ("WCHSC"). The program Carter completed in Minot in 2002 was an in-patient treatment program, from November 25, 2002 to December 20, 2002. Exhibit 11.

9. Carter is currently attending a Recidivist Group program at WCHSC and is receiving acupuncture for his alcoholism. *Id.*

10. Carter did not report any information to the Board regarding his treatment programs after receiving the January 24, 2003, letter from the Board's Executive Director.

11. Carter testified to a fine teaching and coaching record, indicating that he loves teaching and coaching, and loves students. He has no teaching position in place in Bismarck or elsewhere in North Dakota for the 2003-2004 school year. He testified to three offers to teach and/or coach from three out-of-state schools for 2003-2004. However, Carter has a home and business in Bismarck and is just beginning a second business out-of-the country.

12. Carter testified to never having missed a day of school because of alcohol use.

13. Carter has not been evaluated since his last DUI conviction but states that he has not been drinking since that time. He testified to being advised by a counselor at WCHSC to continue with his after-care (recidivist group) program and acupuncture treatments, and states that he sometimes attends Alcoholics Anonymous meetings.

14. Carter admits to being an alcoholic and testified to having "lost it" in the fall of 2002. He said that he then became despondent, "semi-suicidal," and didn't care about events that were happening. He says that he is trying to get back on track now, enjoys teaching and

coaching, and wants to continue to teach until retirement. He says that he does not need the income from teaching but loves to teach.

15. The Board met on March 11, 2003, and voted to deny Carter's 2003 application for a renewal of his license. Exhibit 4, at 3.

### **CONCLUSIONS OF LAW**

1. Up until 2002, Carter apparently had a fine record as a teacher and coach. The Board apparently previously continuously licensed Carter until his application for a renewal of his license in 2003. His license expired January 20, 2003.

2. The Notice of Denial cites N.D.C.C. § 15.1-13-25(1)(d), (e), and (h), and N.D. Admin. Code §§ 67.1-02-02-06(1), and (4), and 67.1-03-01-03(5) as the bases for denial of Carter's license.

3. The evidence shows that Carter's criminal convictions in 2002-2003 have a direct bearing upon his ability to serve the public as a teacher. N.D.C.C. § 15.1-13-25(1)(d).

4. The evidence shows that Carter has violated rules adopted by the Board. *See* Conclusions of Law ("COL") #s 6-8, below. N.D.C.C. § 15.1-13-25(1)(h).

5. The evidence shows that Carter has not been sufficiently rehabilitated under N.D.C.C. § 12.1-33-02.1. N.D.C.C. § 15.1-13-25(1)(e).

6. The evidence shows that Carter has violated rules of the Board in that he violated N.D. Admin. Code § 67.1-02-02-06(1) by failing to comply with licensure statutes or the educator's code of ethics. *See* COL #s 3 and 8.

7. The evidence shows that Carter has violated rules of the Board in that he violated N.D. Admin. Code § 67.1-02-02-06(4) by knowingly providing false information to the Board about his criminal convictions.

8. The evidence shows that Carter has violated rules of the Board in that he violated N.D. Admin. Code § 67.1-03-01-03(5) [Educator's Code of Ethics] by not presenting accurate information on his application for licensure.

### **ANALYSIS OF THE LAW**

The evidence clearly shows that Carter has had a serious alcohol problem for some time. It flared up to be a more serious problem in 2002-2003. It at least contributed to him having several criminal convictions at that time. In any event, the period from the last half of 2002 until about April 2003 was very difficult for Carter. There is no doubt that Carter is a fine teacher and coach, at least based on the record before the hearing officer. However, despite his otherwise fine record, notwithstanding this difficult period of time, under the law, there is no real excuse for Carter's behavior and actions. By his own actions he has jeopardized his teaching career. He became a risk rather than an asset.

Carter has not been evaluated since his most recent DUI. His last DUI was after completing his most recent treatment program. He says he is getting back on track, now, and that he has not been drinking recently. This is probably true. However, he has a history of being treated and then drinking again. He has not demonstrated sufficient rehabilitation at this time. He is a teaching risk at this time. He should not teach, at least in North Dakota, during the 2003-2004 school year. Perhaps thereafter, but not now.

Moreover, Carter provided false information on his application. This is at least as serious an offense as his alcohol-related offenses, especially for a teacher.

Perhaps Carter can again be a fine teacher but now is not the time. He needs to demonstrate rehabilitation sufficient to satisfy the Board.

### **RECOMMENDED ORDER**

The greater weight of the evidence shows that Carter's license was appropriately denied by the Board under N.D.C.C. § 15.1-13-25(1)(d), (e), and (h), and N.D. Admin. Code §§ 67.1-02-02-06(1), and (4), and 67.1-03-01-03(5). The Board's denial of Carter's license is **affirmed**.

Dated at Bismarck, North Dakota, this 30th day of July, 2003.

State of North Dakota  
Education Standards and Practices Board

By: \_\_\_\_\_  
Allen C. Hoberg  
Administrative Law Judge  
Office of Administrative Hearings  
1707 North 9th Street  
Bismarck, North Dakota 58501-1882  
Telephone: (701) 328-3260